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No. 93-745

In The

Supreme Court of the United States

October Term, 1993

MITCHELL SHANDS, DON KEY AND FORREST BUSCH,

Petitioners,

vs.

CITY OF KENNETT, AND WARREN KARSTEN, JOHN MALLOTT, JERRY TALLEY, JOHN VARDELL, AND JINGO COLE, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION

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COUNTER STATEMENT OF THE QUESTION PRESENTED

1. Whether the Eighth Circuit Court of Appeals followed the substantive law established in *Connick v. Myers*, 461 U.S. 138 (1983) and *Pickering v. Board of Education of Township High School*, 391 U.S. 563 (1968), in sustaining the judgment in favor of Respondents on Petitioners' First Amendment Claim on that basis that a showing of actual disruption within a fire department is not necessary when the speech by the public employee does not involve a high degree of public interest, where the fire chief reasonably believed the speech was an attempt to undermine his authority and had led or would lead to disruption within the department and where personal loyalty to the chief is critical to the management structure of the fire department.

2. Whether the Eighth Circuit Court of Appeals followed the substantive law in affirming the judgment in favor of Respondents on Petitioners Fourteenth Amendment due process claim where the statements actually made by Respondents were not made in connection with Petitioners discharge or did not seriously stigmatize Petitioners and where a name clearing hearing was provided to Petitioners and Petitioners names were cleared.

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For The Eighth Circuit

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May it Please the Court:

COUNTER STATEMENT OF THE CASE

Summary of Facts

Although Petitioners have set forth their view of the case, the Statement of Facts presented by Petitioners is blatantly one-sided and could cause this Court to be misled as to the facts of this case. The United States Court

of Appeals for the Eighth Circuit in viewing the facts in a light most favorable to Petitioner, objectively found the facts to be as follows:

> The City of Kennett, having a population of approximately 12,000 operates a volunteer fire department. At the time of the events giving rise to this lawsuit, the department was staffed by seven full-time firemen and twenty-four volunteers. It was the dismissal of plaintiffs from their positions as part-time volunteer firemen that triggered this lawsuit.
>
> In 1988, the fire department had three officers, all volunteers: Fire Chief Bill McMahon, Assistant Fire Chief Don Key, and Captain Bob Holder. In the fall of 1988, the Kennett City Council decided to replace McMahon with a full-time fire chief. On December 6, the council hired John Mallott for the position. Mallott is a professional fireman who had previously been living in a neighboring town. The hiring of Mallott stirred up considerable controversy within the fire department. Many department members believed that the fire department did not need a full-time chief. Other members were upset because the city had hired someone from outside the city rather than someone from within the fire department.
>
> When Mallott became chief in January 1989, a volunteer firefighter position was vacant. David Horton, who had served as a volunteer from 1982 to 1986, applied for the position. After speaking with Horton, Mallott informed both Key and Holder that he intended to hire Horton. On March 21, 1989, Mallott recommended to the city council that Horton be hired as a firefighter.

In accordance with its procedures, the city council deferred consideration of the recommendation until its next meeting, scheduled for April 4.

Having learned that Horton had been recommend~~ed for~~ the firefighter position, plaintiff Busch spoke to Councilman Bill Wilson on March 31, 1989. Busch asked Wilson to make a motion to table the hiring of Horton for two weeks. According to Busch, he told Wilson that the fire department had a safety problem that would be taken care of in two weeks. According to Wilson, however, Busch did not mention any safety problem; rather, Busch said only that there had been some problems with Horton in the past. Wilson informed Busch that he would move to table the hiring but would need someone to second the motion.

The safety problem to which Busch allegedly referred concerned a new policy of City Light, Gas & Water (City Light), which had recently instructed the fire department not to disconnect electric and gas meters at fire scenes because it wanted only its employees to disconnect meters. Disconnecting the meters turns off a building's electricity and gas supply. Consequently, if a fire department officer wanted the meters disconnected from a building at a fire scene, he had to call City Light, which would then send one of its employees to disconnect them. Normally, the employee would arrive at the fire scene about fifteen minutes later. This policy created a problem for the firefighters, for they either had to postpone their firefighting until the City Light employee arrived or risk

being injured by a live electric wire or a gas explosion.

On April 1, a number of the members of the fire department had breakfast at the fire station. As they were cleaning up afterwards, plaintiffs and Holder discussed some surplus firefighting equipment that Mallott had purchased since taking command. They thought the equipment was obsolete and dangerous. The four men also discussed the problem created by City Light's new policy. To solve the problem, they believed that the fire department needed to hire a City Light employee to disconnect meters. Busch informed the others that he had talked to Councilman Wilson about tabling the hiring of David Horton. He said that Wilson had agreed to make the motion but needed someone to second it. Key said that Councilman Cole might agree to second the motion.

Plaintiffs and Holder then went to see Cole at his place of business. They first told Cole that Mallott had purchased some equipment that they thought was unsafe. They also informed Cole about the fire department's need to hire someone authorized to disconnect the meters. They said that a person who was currently working for City Light had applied for a firefighter position and that they believed he should be hired. They told Cole that Busch had spoken with Councilman Wilson about making a motion to table the hiring of David Horton and asked Cole to second the motion.

At the city council meeting on April 4, Wilson moved to table the hiring of Horton, stating that there had been problems with him

in the past. Cole seconded the motion. Nonetheless, the motion was defeated, and the council voted to hire Horton. Over the next few days, Mallott learned that plaintiffs and Holder had asked Councilman Cole to table the hiring of Horton. Additionally, Mallott learned from Horton that one motive behind plaintiffs' visit to Cole was the desire to undermine Mallott's authority. Plaintiff Shands had told Horton that he had spoken with Cole to show Mallott that he (Mallott) could not get everything he wanted from the council. After obtaining the approval of Mayor Karsten and the fire department committee, Mallott dismissed plaintiffs and Holder on April 10. Their dismissal letters stated that they had been discharged for acts of insubordination and misconduct. The next day seventy-five percent of the Kennett firemen walked out in protest of the discharges.

The discharge and the walkout received considerable media coverage in Kennett. Linda Redeffer, a reporter for the *Daily Dunklin Democrat*, wrote a series of articles about the fire department following the discharges. In an April 11 interview, Mallott told Redeffer that the discharge were the result of "a personnel matter that was dealt with according to city policy." Mayor Karsten and Councilman Talley, chairman of the fire department committee, also spoke with Redeffer about the discharges and the walkout. In addition to speaking with Redeffer, Mallott told a television news reporter that the firemen had been discharged for acts of misconduct and insubordination.

> On April 18, the four discharged firemen appeared at a city council meeting. Holder, acting as their spokesman, read a prepared statement, telling the council that they were not guilty of any wrongdoing. On May 4, the council held a special closed session to consider the discharges. Witnesses testified concerning the reasons for the discharges, and the dismissed firemen, with the aid of counsel, were allowed to question these witnesses and make their own statements. On May 14, the city council voted not to reinstate the four men. The council found that their attempt to interfere with the hiring of David Horton constituted a sufficient basis for their discharges. On May 17, the council released a statement to dispel rumors and misinformation concerning the discharges. The release stated that the discharged firemen had not been accused of or dismissed for any financial misdealings, illegal activities, or activities involving moral turpitude. Rather, the discharges were the result of fire department personnel matters.

Shands v. City of Kennett, 993 F.2d 1337 at 1340-1342 (8th Cir. 1993), Appendix to Petition, A-3 through A-6.

Respondents believe the proof raises no factual issues material to *certiorari* even upon full briefing as both the District Court and 8th Circuit viewed the facts in a light most favorable to Petitioner. However, mindful of the obligation imposed by Rule 15.1, this response will point out some of the erroneous and misleading statements of fact contained in the petition including the following:

Clarification or Distinction of Other Facts

In the Statement of the Case Petitioners state that the Eighth Circuit found the speech relating to the tabling of the hiring of David Horton was "although 'undoubtedly related" to the safety concern, touched upon a matter of public concern in a tangential manner." (Petition, p. 3) This statement is typical of petitioner misleading paraphrasing of the Court's decision. The "finding" about which petitioners refer is contained in the Court's discussion of the *Connick v. Myers*, 461 U.S. 138 (1983) analysis of whether the speech was of public concern and is contained in the first two paragraphs of Page A-9 of the Appendix. As stated there, the Court said that petitioners request of Cole to second the motion to table the hiring of David Horton "entered the realm of interfering with a government personnel decision, which is normally not a matter of public concern." (Appendix A-9). Although the Court did determine that two components of petitioners speech directly addressed matters of public concern which caused application of the *Pickering* balancing test, petitioners statement needs to be clarified because the interference with the personnel decision and the petitioners attempt to undermine the authority of the fire chief by doing so were important in the Court's application of the *Pickering* balancing test.

Petitioners also stated that the Light, Gas and Water (LG&W) policy prohibiting non-employees from pulling meters created "serious" problems for the public and firemen. The Eighth Circuit finding was that the policy created a problem for the firemen. The "serious" and "public" are petitioners' editorial addition to the Court's opinion.

In one of the few statements of fact in which petitioners actually cite the Court to a portion of the transcript or opinion to support this statement, a view of the cited portion of the transcript does not support petitioners characterization of the statement. Petitioners brief states that petitioners explained the reason for requesting the delay in the hiring of Horton was to provide time to explore the possibility of creating a second position so that both the LG&W employee and David Horton could be hired. (Petition, p. 5-6) The portion of the transcript cited does not support that statement. The transcript cited states:

> Q. Did anyone explain to Councilman Cole why he was being asked to second the motion?
>
> A. To the best of my knowledge, they did.
>
> Q. Okay. And what is your recollection of the reason they wanted to postpone the hiring of David Horton?
>
> A. I believe he told him the same that I have stated here today, that he would like to have it seconded and postponed for two weeks in order to try to get another employee to pull light meters. (TR p. 574, 1, 22-25, p. 575, 1. 1-5)

Although this distinction may be minor, it is indicative of petitioners supplying their own interpretation to the facts of this case.

Petitioners "facts" further paraphrases their own testimony about how they denied any motivation or action on their part to undermine the chief's authority and paints a picture of petitioners being loyal to the chief with a good working relationship and having no conflict

with the chief. Were this not a serious matter, petitioners ascertation of half-truths and omissions from the record and opinion from the Court would be laughable. As such, it is deplorable. The Eighth Circuit, in viewing the facts most favorable to petitioners, found that petitioners were discharged after Mallott learned from Horton "that one motive behind petitioners visit to Cole was the desire to undermine Mallott's authority. Petitioner Shands had told Horton that he had spoken with Cole to show Mallott that he (Mallott) could not get everything he wanted from the council." (Appendix A-5) Shands admitted in his testimony that he had told Horton that this was a motive (TR p. 578, 1. 1-7) This motive, as it related to the reasonableness of the chief's actions in discharging petitioners was crucial in the Eighth Circuit's application of the *Pickering* balancing test. Apparently, petitioners did not think that this was the kind of "fact" to which this Court should be exposed in determining whether or not to accept the petition. This intentional omission of what may be the most important fact in the Eighth Circuit's opinion should alert this Court to question the credibility of petitioners other statements, most of which contain no reference to the opinion or transcript from which they were gleaned.

As to petitioners statement of facts concerning the procedural due process claim (Titled "City's Official Statements to the Press,") (Petition, p. 6-8) we again defer to the Eighth Circuit's finding, again viewing the evidence in the light most favorable to petitioners, that Mallott was the only city official to make public statements directly concerning petitioners. His statement was that the reason for the dismissals "were the personnel

policy that was dealt with according to city policy" and that petitioners had been dismissed for acts of insubordination and misconduct, that they "were insubordinate to a standing order to city policy" and that they "were not insubordinate to a direct order from me." (Appendix A-16) Petitioners failure to cite any reference in either the opinion, judgment or transcript upon which their statement of facts is based makes it impossible to ascertain from where the so-called facts were based.

Respondents must however point out to the Court other blatant misrepresentations of the facts made by petitioners. In one sentence, petitioners state that Mallott, in two interviews, made various statements about Key and Holder (Petitioners Brief 7). The next sentence stated that Mallott said that the firemen had claimed and collected money for fire training meetings without doing any training (Petitioners Brief 7) implying that Mallott was accusing Key and Holder of these acts. As the Eighth Circuit found, there is nothing in the record to support the implication that Mallott was referring to Key and Holder or any other petitioner.

The most glaring misrepresentation came later in the same paragraph on page 8 of petitioner's brief. In discussing the April 18, 1989 meeting of the city council where Bob Holder objected to insinuations about audits and missing money (none of which were made as directly concerning petitioners) and where Holder requested the council to publicly clear the good names of any suggestion of dishonesty and criminal acts, petitioners state "no city official took any action but let things stand as they appeared in the press." (Petitioners Brief 8) What petitioners have failed to include in their so-called "statement

of facts" was that at the April 18, 1989 meeting, presentations were made by Holder, various members of the council and interested citizens made presentations, petitioners were represented by counsel at the hearing and the mayor allowed Attorney Bruce to question each person concerning his or her statement, thus providing complete disclosure by all parties as to what happened. (Appendix A-31). Further, another hearing was held at the request of petitioners on May 4, 1989. Again, petitioners were represented by counsel, and were allowed to question witnesses against them and make their own statements. After this meeting, and after the May 14, 1989 meeting in which the City voted not to reinstate the four men, the city released a statement to dispel rumors and misinformation concerning the discharges. The release stated that the discharged firemen had not been accused of or dismissed for any financial misdealings, illegal activities, or activities involving moral turpitude. Rather the discharges were the result of fire department personnel matters. (Appendix A-6) Again, such misstatements and half-truths bring into question the credibility of all statements made by petitioners and constitute a disservice to this Court.

ARGUMENT: REASONS FOR DENYING THE WRIT

I. THE PETITION RAISES NO SPECIAL OR IMPORTANT QUESTIONS, AND NO EXTREME DEPARTURES FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS THAT REQUIRE THIS COURT'S INTERVENTION.

The petition should be denied because it totally lacks any "special and important reasons" for granting it, as

required by Rule 10.1 of this Court. This case presents no new questions of law. It presents no substantial federal constitutional issue of novelty or an interpretation. As will be discussed in part II of this Argument, there is no conflict between the judgment of the Eighth Circuit for which a review is sought and the decisions of other Courts of Appeals. Nor has the Eighth Circuit in its judgment "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision," as specified in Rule 10.1(a) of this Court.

II. THE COURT OF APPEALS' DECISION AS TO PETITIONERS FIRST AMENDED CLAIM IS NOT IN CONFLICT WITH THE DECISIONS OF A MAJORITY OF THE OTHER CIRCUIT COURTS OF APPEALS IN THAT THE COURT OF APPEALS, IN VIEWING ALL MATERIAL FACTS IN A LIGHT MOST FAVORABLE TO PETITIONERS, AND THEN APPLYING THE *PICKERING* BALANCING TEST TO THOSE FACTS, THE COURT FOUND THAT PETITIONERS SPEECH WAS NOT PROTECTED BECAUSE IT DID NOT INVOLVE A HIGH DEGREE OF PUBLIC INTEREST, THAT THE FIRE CHIEF REASONABLY BELIEVED THAT THE SPEECH WAS AN ATTEMPT TO UNDERMINE HIS AUTHORITY AND HAD LED OR WOULD LEAD TO DISRUPTION WITHIN THE DEPARTMENT AND THAT, IN THIS SITUATION, PERSONAL LOYALTY TO THE CHIEF WAS CRITICAL TO THE MANAGEMENT STRUCTURE OF THE FIRE DEPARTMENT.

Petitioners First Amendment claim is based upon their discharge as members of a volunteer fire department for speech activity. The determination of whether

petitioners speech is protected by the First Amendment requires a two step judicial inquiry. The first issue is whether the petitioners speech can be "fairly characterized as constituting speech on a matter of public concern." *Connick v. Myers*, 461 U.S. 138, 146 (1983). If the speech addresses a matter of public concern, the Court must then balance the "interests of the employee, as a citizen, in commenting upon matters of public concern in the interest of the state, as an employer, in promoting the efficiency of public services it performs through its employees." *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968). Both of these questions are questions of law for the Court. *Connick*, 461 U.S. at 148. In applying the *Connick* analysis, the Eighth Circuit determined that the issues of the purchasing of fire fighting equipment and the fire departments need to hire someone to disconnect the meters did address topics of public concern. In discussing the attempt of petitioners to interfere with the hiring of David Horton, the Court stated that they entered the realm of interfering with a government personnel decision, which is normally not a matter of public concern (Appendix A-9) and that the request to second the motion to table the hiring of Horton touched on a matter of public concern only in a tangential attenuated manner (Appendix A-9)

Having found that two components of the speech directly addressed matters of public concern and that one component tangential did, the Court then applied the *Pickering* balancing test. In applying the *Pickering* balancing test to the competing interest, the Court weighs six interrelated factors:

(1) The need for harmony in the office or workplace;

(2) Whether the governments responsibilities require a close working relationship to exist between the plaintiff and coworkers when the speech in question has caused or could cause the relationship to deteriorate;

(3) The time, manner and place of the speech;

(4) The context in which the dispute arose;

(5) The degree of public interest in the speech; and

(6) Whether the speech impeded the employees ability to perform his or her duties. *Bowman v. Pulaski County Special School District*, 723 F.2d 640, 644 (8th Cir. 1983) (citing *Connick*, 461 U.S. at 151-154). The analysis in *Pickering* must be tailored to the particular facts of each case. *McBee v. Jim Hogg County*, 730 F.2d 1009 (5th Cir. 1984). The *Pickering* balance is flexible and the weight to be given to any one factor depends upon the specific circumstances of each case. *Germann v. City of Kansas City*, 776 F.2d 761, 764 (8th Cir. 1985) (citing *Egger v. Philips*, 710 F.2d 292, 319 (7th Cir.), *cert. denied* 464 U.S. 918 (1983) *cert. denied*, 479 U.S. 813 (1986). It is unfeasible and inappropriate to set for the uniform standard, but the general guidepost of *Pickering* are to be followed. *Brasslett v. Cota*, 761 F.2d 827 (1st Cir. 1985). The Eighth Circuit in this case properly addressed all six factors of the *Pickering* test.

Petitioners maintain that the majority of circuits require a showing of actual disruption before a public employee can be discharged. The issue as to whether or not actual disruption must be shown in fully addressed by the Eighth Circuit in its analysis under the need for

harmony in the workplace factor of the *Pickering* test. In stating that evidence of actual disruption is not required in all cases, citing *Germann*, 776 F.2d at 765 the Court set forth the factors relevant to the amount of disruption that a government employee must tolerate in the *Pickering* calculus as the extent to which the speech addresses a matter of public concern, *Connick*, 461 U.S. at 152, the type of service the employer provides, *Hughes v. Whitmer*, 714 F.2d 1407, 1419 (8th Cir. 1983), *cert. denied*, 465 U.S. 1023 (1984) and the context of the speech, *Germann*, 776 F.2d at 765.

After discussing the need of a public safety organization such as the fire department to have a more significant interest than the typical government employee in regulating the speech activities of its employees "to promote efficiency, foster loyalty and obedience to superior officers, maintain morale, and instill public confidence" in its ability, *Hughes*, 714 F.2d at 419 (quoting *Gasparinetti v. Kerr*, 568 F.2d 311, 315-316 (3rd Cir. 1977), *cert. denied* 436 U.S. 903 (1978), that "when lives may be at stake in the fire, an *esprit de corps* is essential to the success of a joint endeavor" *Janusaitis v. Middleberry Volunteer Fire Department*, 607 F.2d 17, 26 (2nd Cir. 1979) the Court stated that the decision to discharge by the fire chief in such a situation is entitled to judicial deference. In discussing the deference given to the chief's decision to discharge, the Court properly concluded that the chief reasonably believed that the speech was an attempt to undermine his authority and had led or would lead to disruption in the department (Appendix A-12) The Court noted (1) petitioners and Holder possessed the greatest potential to undermine the chief's authority as they were

the officers and ranking members of the force; (2) that before going to Councilman Cole, they never met directly with the chief to discuss their concerns but instead circumvented the chain of command; and (3) Shands statement to Horton that they had gone to Councilman Cole because they wanted to show Mallott "that he (Mallott) could not have his way about every little thing." (Appendix A-12). Considering these factors, it became obvious that there was a serious personnel problem and that petitioners were attempting to undermine the authority of the chief. To wait for the authority of the chief to be completely undermined and the fire department actually disrupted, would destroy the efficient operation of the department to the detriment of the public. As is stated in *Connick*, it is not necessary for an employer to allow events to unfold to the extent that the destruction of the office and the destruction of working relationships is manifest before taking action. *Connick* at page 149. To state the obvious, had petitioners been successful in undermining the chief's authority with the City Council this could have had no other result than to destroy his ability to effectively lead and discipline the men under him, which included petitioners, thus destroying the working relationship between the chief and the department necessary for the efficient operation of the department. It must further be remembered that the *Pickering* test is truly a balancing test, with employment disruption being only weights on the scales. *Porter v. Califano*, 592 F.2d 770 (5th Cir. 1979).

It is further noted by the Court in its *Pickering* analysis that in a volunteer fire department like Kennett's, where a fire chief does not closely supervise those under

his command, personal loyalty to the chief is critical to the management structure of the fire department (Appendix A-13).

The cases cited by petitioner to support their claim of a conflict between the circuits on this issue are not supportive. All of the cases cited involve speech which the Courts noted as being of **substantial** public interest and that there was absolutely no showing of disruption, or perceived disruption, and in all of the cases, the issue of actual disruption was but one of the factors considered by those Courts in applying the *Pickering* analysis. In none of the cases cited by petitioners did the Courts rely solely upon the issue of actual disruption in reaching their decision. Rather, the decision was reached only after full discussion of the *Pickering* balancing factors and, only then, did the Courts determine that the public interest of the speech outweighed the other differing factors.

The Court in the case at bar determined that whatever level of public interest was contained in the petitioners speech, that level was far outweighed by the other *Pickering* factors. (Appendix A-15). Petitioners in their argument in trying to raise the speech activity to a level of substantial public interest discuss only the safety issues. At no time do they discuss petitioners attempts to undermine the authority of the chief and totally ignore petitioners stated reasons for going to Cole in order to show Mallott that he could not get everything he wanted from the council. As has been discussed in applying the *Pickering* test, all of the circumstances concerning the speech must be considered, including the context of the speech. Petitioners want to discuss, and want this Court only to consider, carefully picked out circumstances

which favor petitioners as if the safety issues were the only issues about which petitioners spoke. It should be noted that petitioners were discharged only after Mallott learned of Shands statement to Horton and the City Council found that attempt to interfere with the hiring of Horton constituted sufficient basis for the discharge (Appendix A-6). In its *Pickering* analysis, the Eighth Circuit cited the manner in which petitioners spoke, the context of the speech in view of the history of the hiring of Mallott and petitioners stated motive to undermine the authority of Mallott, none of which rise to the level of substantial public interest. Petitioners attempt to create a conflict among the circuits by choosing only one factor of the *Pickering* balancing test should fail. It should be noted that at no time, in discussing the law of this case, did petitioners even mention *Pickering* or the factors to be weighed in the *Pickering* analysis.

III. THE COURT OF APPEALS DID NOT ERR IN FINDING AGAINST PETITIONERS ON THEIR FOURTEENTH AMENDMENT DUE PROCESS CLAIM IN THAT THE STATEMENTS MADE BY RESPONDENTS TO THE PRESS WERE NOT MADE IN CONNECTION WITH RESPONDENTS DISCHARGE AND DID NOT SERIOUSLY STIGMATIZE THEM AND WHERE A NAME CLEARING HEARING WAS PROVIDED PETITIONERS AND PETITIONERS' NAMES WERE CLEARED.

In their petition concerning their Fourteenth Amendment Due Process claim, petitioners boldly state that there was ample evidence to support the jury verdict and that the Eighth Circuit's decision was in conflict with the

decisions of this Court. Since petitioners fail to refer the Court to any portion of the record where this "ample evidence" may be found it is impossible to ascertain as to what evidence they refer. The Eighth Circuit reviewed the record and found that the only public statements made directly concerning petitioners was Mallott's statements that petitioners were discharged because they were insubordinate to a standing order to city policy (Appendix A-16). The Court correctly applied the decision of this Court in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) that these statements, and the statements actually made to Linda Redeffer, were not statements which were allegedly untrue charges that would stigmatize them as to seriously damage their associations in their community, or foreclose their freedom to take advantage of other employment opportunities. Citing *Roth*, supra, *Paul v. Davis*, 424 U.S. 693 (1976), *Bishop v. Wood*, 426 U.S. 341 (1976) and *Codd v. Vegler*, 429 U.S. 624 (1977).

In any event, even if some of the statements might be considered stigmatizing, which they weren't, all that was required was that the city provide notice and an opportunity to be heard. *Roth*, supra. This was done. Respondents were given written notice of their discharge and the reasons. They were afforded a public opportunity at a City Council meeting to refute the charges against them on April 18, 1989. A second hearing was held on May 4, 1989. In both instances, petitioners were allowed to make their own statements, were represented by counsel and were allowed to question witnesses against them. The city even released a statement stating that petitioners had

not been accused or dismissed for any financial misdealings, illegal activities, or activities involving moral turpitude.

CONCLUSION

For the reasons set forth above, respondents state that the decision of the Eighth Circuit does not create, or resolve, any conflict with the decisions of this Court or the other Circuits and that petitioners petition be denied.

Respectfully submitted,

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